

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION**

DONNA K. CROSS

PLAINTIFF

v.

Civil No. 4:16-cv-04107

COMMISSIONER, SOCIAL
SECURITY ADMINISTRATION

DEFENDANT

ORDER

Plaintiff's Complaint was filed November 4, 2016. ECF No.1. On March 15, 2017, Plaintiff's Appeal Brief was filed. ECF No. 13. In this brief, it is stated Plaintiff died on November 21, 2016. ECF No. 13, Pg. 3. To date, no motion to substitute parties has been filed.

The substitution of parties after death is controlled by Rule 25(a) of the Federal Rules of Civil Procedure. *Kaubisch v. Weber*, 408 F.3d 540, 542 (8th Cir. 2005). Rule 25(a) provides that, after death of a party, the action does not abate, but the death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties. *See* Fed. R. Civ. P. 25(a)(2). Under Rule 25(a)(1), the motion for substitution must be made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death. If the motion for substitution is not timely made, then the action by the decedent must be dismissed. Although the ninety-day rule appears to be mandatory, the district court has the discretion under Rule 6(b) to permit an untimely motion for substitution if the failure to file the motion resulted from excusable neglect. *See* Fed. R. Civ. P. 6(b).

It does not appear this matter can continue until such time that the death of Plaintiff has been suggested upon the record and a proper motion to substitute is filed.

Therefore, Plaintiff shall comply with Rule 25(a) of the Federal Rules of Civil Procedure and seek proper substitution on behalf of Plaintiff.

IT IS SO ORDERED this 14th day of December 2017.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
U.S. MAGISTRATE JUDGE